Robert Rogers, d/b/a Town and Country Construction *and* Carpenters Local 433, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 14-CA-14530

June 3, 1981

DECISION AND ORDER

Upon a charge filed on December 17, 1980, by Carpenters Local 433, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and duly served on Robert Rogers, d/b/a Town and Country Construction, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 14, issued a complaint and notice of hearing on January 22, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on December 12, 1980, Respondent discharged employees Fred Kinzinger, Erwin Retinghouse, Albert Schirmer, and Ron Zimmerman, and thereafter failed and refused, and continues to fail and refuse, to reinstate said employees because of their membership in the Union.

No answer to the complaint having been filed, counsel for the General Counsel, on February 4, 1981,[1] mailed a certified letter to Respondent advising it that the Board's Rules and Regulations required that an answer be filed within 10 days from the service of the complaint. This letter also informed Respondent that counsel for the General Counsel would consider moving for summary judgment if Respondent did not file an answer by February 9. Thereafter, on February 9, counsel for the General Counsel received a telegram from Robert Rogers, Respondent's owner, which states as follows: "I deny all allegations and complaint issued against me in Case No. 14-CA-14530 [sic] according to my records all workers here have been paid." Counsel for the General Counsel immediately called Rogers on the telephone, and advised him that Respondent's answer was inadequate as it constituted a mere general denial of the allegations in the complaint and suggested that Rogers secure legal counsel. Rogers then informed counsel for the General Counsel that he would be represented in this proceeding by Allen Hart. That same day, February 9, counsel for the General Counsel notified Hart that Respondent's answer was untimely and lacked the specificity required by the Board's Rules and Regulations. Hart stated that he would file an appropriate answer by February 11. After receiving no further answer to the complaint, counsel for the General Counsel, on February 12, informed Hart by certified letter that he would move for summary judgment unless Respondent filed an adequate answer by the close of business on February 16. Respondent failed to do so. On February 18, Respondent submitted to the Regional Director a written request for a 10-day extension of time to file an answer. The Regional Director denied the request on Feburary 19.

On February 25, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on March 4, the Board issued an Order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has filed no response to the Notice To Show Cause and, accordingly, the allegations of the Motion for Summary Judgment stand uncontroverted.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

The Board has the authority under the Act to establish reasonable procedural rules regarding the time and manner of filing an answer to a complaint. Section 6 of the National Labor Relations Act provides that the Board "shall have authority . . . to make . . . in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act." Pursuant to this provision, the Board has promulgated rules regarding the filing of an answer to a complaint, including the requirement that such answer be filed within a definite period. Thus, Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer

[1] All dates herein are in 1981, unless otherwise indicated.

> filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

As in other judicial and administrative proceedings, the purpose of these requirements is to facilitate the joining of the issues and to reduce the area of litigation so that the rights of parties may be established more quickly and wrongs sooner rectified.

The complaint and notice of hearing served on Respondent herein specifically states that unless an answer is filed to the complaint "within 10 days from the service thereof . . . all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board." Thereafter, on February 9, 5 days after an answer was due, Respondent filed an answer consisting of a single general denial of all allegations in the complaint. We therefore find that Respondent's purported answer was untimely, improper, and did not comply with the requirements of Section 102.20 of the Board's Rules and Regulations set forth above.[2] Further, after receiving Respondent's answer to the complaint, counsel for the General Counsel advised Respondent's owner and its counsel that the answer was inadequate under the Board's rules. Counsel for the General Counsel subsequently informed Respondent's counsel in writing that, unless an answer was filed by February 16, the General Counsel would move for summary judgment by the Board. Nevertheless, Respondent failed to file a timely valid answer to the complaint. Thereafter, on February 25, counsel for the General Counsel file with the Board a Motion for Summary Judgment.

Thus, Respondent has failed to file an answer which complies with the Board's Rules and Regulations within 10 days from the service of the complaint, or within the extended time afforded it by the Regional Director. Since no good cause has been shown for Respondent's failure to file an answer or its further failure to file a response to the Notice To Show Cause, in accordance with Section 102.20 of the Board's Rules and Regulations, the allegations of the complaint herein stand uncontroverted and are deemed to be admitted to be true, and are so found to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

[2] *Neal B. Scott Commodities, Inc.*, 238 NLRB 32, 33 (1978).

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Robert Rogers, d/b/a Town and Country Construction, maintains its principal office and place of business at 9700 West Main Street, Belleville, Illinois, where it is, and at all times material herein has been, engaged as a general contractor in the construction industry. During the year ending December 31, 1980, a representative period, Respondent, in the course and conduct of its business operations, purchased and received at its various jobsites in the State of Illinois, goods and materials valued in excess of $50,000 from suppliers which had purchased and caused said goods to be delivered to their Illinois places of business directly from points located outside the State of Illinois.

We find on the basis of the foregoing that Robert Rogers, d/b/a Town and Country Construction, is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE UNFAIR LABOR PRACTICES

On or about December 12, 1980, Respondent discharged its employees Fred Kinzinger, Erwin Retinghouse, Albert Schirmer, and Ron Zimmerman, and at all times since has failed and refused, and continues to fail and refuse, to reinstate or offer to reinstate said employees to their former jobs or substantially equivalent positions of employment, because of said employees' membership in and activities on behalf of the Union.

On the basis of the foregoing, we find that Respondent has discriminated against its employees in regard to the terms and conditions of their employment, thereby discouraging membership in a labor organization, and that by such conduct Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent Robert Rogers, d/b/a Town and Country Construction, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent discriminatorily discharged employees Fred Kinzinger, Erwin Retinghouse, Albert Schirmer, and Ron Zimmerman, we shall order that it offer these employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. We shall also order that Respondent make said employees whole for any loss of earnings they may have suffered due to the discrimination practiced against them, to be computed in accordance with the formula approved in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[3]

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Robert Rogers, d/b/a Town and Country Construction, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Carpenters Local 433, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By the acts described in section III, above, Respondent has interfered with, restrained, coerced, and discriminated against its employees in the exercise of the rights guaranteed them by Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Robert Rogers, d/b/a Town and Country Construction, Belleville, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging employees and failing and refusing to reinstate or to offer to reinstate employees to their former or substantially equivalent positions because they join or assist Carpenters Local 433, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, or any other labor organization, or engage in other concerted activities for the purposes of collective bargaining and mutual aid and protection.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer employees Fred Kinzinger, Erwin Retinghouse, Albert Schirmer, and Ron Zimmerman immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority on any other rights or privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered due to the discrimination practiced against them, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Belleville, Illinois, facility copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 14, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this

[3] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). Member Jenkins would award interest on the backpay due in accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labr Relations Board."

Order, what steps the Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discharge employees and fail and refuse to reinstate said employees to their former or substantially equivalent positions of employment because they join or assist Carpenters Local 433, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, or any other labor organization, or engage in other concerted activities for the purpose of collective bargaining and mutual aid and protection.

WE WIL NOT in any like or related manner interfere wih, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer Fred Kinzinger, Erwin Retinghouse, Albert Schirmer, and Ron Zimmerman immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make each of the four above-named employees whole for any loss of earnings they may have suffered due to the discrimination practiced against them, plus interest.

ROBERT ROGERS, D/B/A TOWN AND COUNTRY CONSTRUCTION